
STATUTORY INSTRUMENTS

2021 No. 1026

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) (Amendment) Rules 2021

PART 3

Miscellaneous amendments of the Insolvency Rules

Amendment of Part 1 of the Insolvency Rules

- 7.—(1) Rule 1.17 (registrar of companies: covering notices) is amended as follows.
- (2) For paragraph (1) substitute.—
- “(1) This rule applies where—
- (a) the Act or these Rules require an office-holder to deliver any of the documents specified in paragraph (1A) to the registrar of companies, or
 - (b) the directors are required to deliver a copy of a court order to the registrar of companies in accordance with sections A31(7) or A32(5).”
- (3) After paragraph (1) insert—
- “(1A) The documents specified in this paragraph are—
- (a) a notice under section A38 bringing a moratorium under Part A1 of the Act to an end;
 - (b) an account or a summary of receipts and payments;
 - (c) a court order;
 - (d) a statement of administrator’s proposals (including a statement of revised proposals);
 - (e) a statement of affairs;
 - (f) a statement of concurrence;
 - (g) a notice of an administrator’s resignation under paragraph 87(2) of Schedule B1;
 - (h) any report including—
 - (i) a final report,
 - (ii) a progress report (including a final progress report);
 - (iii) a report of a creditor’s decision under paragraph 53(2) or 54(6) of Schedule B1, and
 - (iv) a report of a decision approving a CVA under section 4(6) and 6(A) or paragraph 30(3) and (4) of Schedule A1;
 - (i) a copy of the notice that a CVA has been fully implemented or terminated that the supervisor is required to deliver under rule 2.43(3).”
- (4) In paragraph (2), after “office holder” insert “or the directors (as the case may be).”

8.—(1) Rule 1.19 (standard contents of documents relating to the office of office-holders) is amended as follows.

(2) For paragraph (1)(b) substitute—

“(b) where the document relates to—

- (i) an appointment (other than an appointment to which sub-paragraph (b)(ii) refers) the person, body or court making the appointment; or
- (ii) in the case of an appointment of a person as a monitor in respect of a moratorium for a company to which section A3 applies, the court with which the relevant documents, within the meaning given by section A6, were lodged.”.

9.—(1) Rule 1.27 (standard contents of notices relating to the office of office-holders) is amended as follows.

(2) For paragraph (b) substitute—

“(b) Where the document relates to—

- (i) an appointment (other than an appointment to which sub-paragraph (b)(ii) refers) the person, body or court making the appointment; or
- (ii) in the case of an appointment of a person as a monitor in respect of a moratorium for a company to which section A3 applies, the court with which the relevant documents, within the meaning given by section A6, were lodged.”.

10.—(1) Rule 1.34 (creditor’s election to opt-out) is amended as follows.

(2) Before paragraph (1) insert—

“(A1) This rule does not apply in relation to a moratorium under Part A1 of the Act.”.

11.—(1) Rule 1.35 (office-holder to provide information to creditors on opting-out) is amended as follows.

(2) Before paragraph (1) insert—

“(A1) This rule does not apply in relation to a moratorium under Part A1 of the Act.”.

12.—(1) Rule 1.52 (right to list of creditors) is amended as follows.

(2) In paragraph (1)—

- (a) after “administration” insert “or a moratorium under Part A1”; and
- (b) after “administrator” insert “or as the case may be, the monitor”.

(3) In paragraph (2) after “administrator” insert “or, as the case may be, the monitor”.

(4) In paragraph (3)—

- (a) after “administrator” insert “or, as the case may be, the monitor”.
- (b) substitute “the administrator thinks” with “the administrator or monitor thinks”.

Amendment of Part 2 of the Insolvency Rules

13.—(1) Rule 2.2 (proposal for a CVA: general principles and amendment) is amended as follows.

(2) For paragraph (2) substitute—

“(2) The proposal may be amended with the nominee’s agreement in writing where—

- (a) the nominee is not the liquidator or administrator of the company; and
- (b) the nominee’s report has not been lodged with the court under section 2(2).”.

(3) Omit paragraphs (3) and (4).

14.—(1) Rule 2.3 (proposal: contents) is amended as follows.

(2) In the Table in paragraph (1), for the entry “Address (where moratorium proposed)” substitute—

“Matters relating to a moratorium	whether a moratorium is, or has been, in force under Part A1 of the Act and, if so, the day that moratorium came into force and (if applicable) the day it ended;”
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15.—(1) Rule 2.5 (statement of affairs (section 2(3))) is amended as follows.

(2) In paragraph (1) after “the following information” insert “and, in addition, where paragraph (1B) applies, the information specified in that paragraph”.

(3) After paragraph (1) insert—

“(1A) Paragraph (1B) applies if a moratorium under Part A1 of the Act is, or has been, in force for the company at any time within the period of 12 weeks ending with the day on which the statement of affairs is made up.

(1B) Where this paragraph applies the statement of affairs must identify which of the debts owed by the company are—

- (a) moratorium debts; or
- (b) priority pre-moratorium debts

within the meaning given by section 174A(1).

(1C) Where paragraph 1B applies, paragraph 1(c) has effect as if the reference to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.”.

16.—(1) Rule 2.25 (members’ consideration at a meeting) is amended as follows.

(2) For paragraph (2) substitute—

“(2) The date of the meeting (except where the nominee is the administrator or liquidator of the company) must not be more than 28 days from the date on which the nominee’s report is lodged with the court under rule 2.8.”.

17. For rule 2.26 (creditors’ consideration by a decision procedure) substitute—

“Creditors’ consideration by a decision procedure

2.26. Where the nominee is inviting the creditors to consider the proposal by a decision procedure, the decision date must not be less than 14 days from the date of delivery of the notice and not more than 28 days from the date the nominee’s report is lodged with the court under rule 2.8.”.

Amendment of Part 3 of the Insolvency Rules

18.—(1) Rule 3.10 (the hearing) is amended as follows.

(2) After paragraph (c) insert—

(1) Section 174A was inserted by paragraph 13 of Schedule 3 to the Corporate Insolvency and Governance Act 2020.

“(ca) if there is a moratorium in force for the company under Part A1 of the Act, the monitor;”.

19.—(1) Rule 3.23 (notice of intention to appoint) is amended as follows.

(2) In paragraph (1)—

(a) after sub-paragraph (e) insert—

“(ea) a statement as to whether there is a moratorium in force for the company under Part A1 of the Act;”, and

(b) for sub-paragraph (f) substitute—

“(f) a statement that the company has not within the preceding 12 months been in administration;”.

20.—(1) Rule 3.25 (notice of appointment without prior notice of intention to appoint) is amended as follows.

(2) In paragraph (2)—

(a) after sub-paragraph (e) insert—

“(ea) whether there is a moratorium in force for the company under Part A1 of the Act;” and

(b) for sub-paragraph (f) substitute—

“(f) that the company has not within the past 12 months been in administration;”.

21.—(1) Rule 3.27 (publication of administrator’s appointment) is amended as follows.

(2) In paragraph (3), before sub-paragraph (a) insert—

“(za) if there is a moratorium in force for the company under Part A1 of the Act, to the monitor;”.

22.—(1) Rule 3.30 (statement of affairs: content (paragraph 47 of Schedule B1)) is amended as follows.

(2) In paragraph (2) after “(in addition to the matters required by paragraph 47(2) of Schedule B1)” insert “the following and, in addition, where paragraph (2B) applies, the information specified in that paragraph”.

(3) After paragraph (2) insert—

“(2A) Paragraph (2B) applies if a moratorium under Part A1 of the Act is, or has been, in force for the company at any time within the period of 12 weeks ending with the day on which it entered administration.

(2B) Where this paragraph applies the statement of affairs must identify which of the debts owed by the company are—

- (a) moratorium debts; or
- (b) priority pre-moratorium debts

within the meaning given by section 174A.

(2C) Where paragraph (2B) applies—

- (a) Sub-paragraph 2(a)(iv) has effect as if the references to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A; and

- (b) Sub-paragraph 2(b)(i), (ii), (vii) has effect as if the reference to the preferential debt including references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.”.

23.—(1) Rule 3.35 (administration’s proposals: additional content) is amended as follows.

(2) In paragraph (1)—

(a) after sub-paragraph (d) insert—

“(da) a statement as to whether a moratorium under Part A1 of the Act has been in force for the company at any time within the period of 2 years ending with the day on which it entered administration and, if so—

- (i) the day on which it came into force;
- (ii) the day on which it ended; and
- (iii) particulars of the purposes for which it was entered into and whether, and to what extent, those purposes were achieved;” and

(b) in sub-paragraph (h)(i) after “financial position of the company” insert “(as to which see paragraph (1A))”.

(3) After paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(h)(i) if a moratorium has been in force at any time within the period of 12 weeks ending with the day on which the company entered administration then the details of the financial position of the company must identify which of the debts owed by the company are—

- (a) moratorium debts; or
- (b) priority pre-moratorium debts

within the meaning given by section 174A.”.

24.—(1) Rule 3.50 (expenses) is amended as follows.

(2) After paragraph (3) insert—

“(4) The costs of an application by the administrator under rule 1A.24 are to be treated as an expense of the administration unless the court orders otherwise.”.

25.—(1) Rule 3.51 (order of priority) is amended as follows.

(2) For paragraph (1) substitute—

“(1) Where paragraph 64A(2) or paragraph 99(1) of Schedule B1 apply, the items specified in paragraph 64A or as the case may be, paragraph 99, are payable in priority to the expenses in this rule.”.

26. After 3.51 insert—

“Priority of moratorium debts in subsequent administration

3.51A. Where paragraph 64A(1) of Schedule B1 applies, the moratorium debts and priority pre-moratorium debts mentioned in paragraph 64A(2) of the Schedule are payable in the following order of priority—

- (a) amounts payable in respect of goods or services supplied during the moratorium under a contract where, but for section 233B(3) or (4)(3), the supplier would not have to had to make that supply;
- (b) wages or salary(4) arising under a contract of employment;
- (c) other debts or other liabilities apart from the monitor’s remuneration or expenses; and
- (d) the monitor’s remuneration or expenses.”.

27.—(1) Rule 3.117 (estate to be distributed in respect of the accounting periods) is amended as follows.

(2) After paragraph (5) insert—

“(5A) Where paragraph 64A of Schedule B1 applies, paragraph (4) and (5) shall have effect as if the reference to preferential creditors and preferential debts included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.”.

Amendment of Part 4 of the Insolvency Rules

28.—(1) Rule 4.1 (power to make a block transfer order) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (a) omit “or”;
- (b) in sub paragraph (b) after “CVA” insert “or”;
- (c) after sub-paragraph (b) insert—

“(c) a monitor in respect of a moratorium under Part A1 of the Act.”.

29.—(1) Rule 4.2 (application for a block transfer order) is amended as follows.

(2) In paragraph (2) before sub-paragraph (a) insert—

“(za) section A39 (moratorium under Part A1 of the Act);”.

(3) In paragraph (3) before sub-paragraph (a) insert—

“(za) section A39 (moratorium under Part A1 of the Act);”.

Amendment of Part 5 of the Insolvency Rules

30.—(1) Rule 5.2 (interpretation) is amended as follows.

(2) In paragraph (1), at the appropriate place, insert—

““creditor” in relation to a decision procedure under section A11 (extension by directors with creditor consent) means a creditor who is a pre-moratorium creditor within the meaning given by section A12;”.

31.—(1) Rule 5.6 (physical meetings) is amended as follows.

(2) In paragraph (1), after “business days” insert “or in the case of a decision procedure in respect of a moratorium under Part A1 of the Act, three days”.

32.—(1) Rule 5.8 (notices to creditors of decision procedure) is amended as follows.

(3) Section 233B was inserted by section 14 of the Corporate Insolvency and Governance Act 2020.

(4) “Wages or salary” has the same meaning as section A18 of the Act.

(2) At the beginning of paragraph (3)(f) and paragraph (3)(g) insert “except in the case of a decision procedure in respect of a moratorium under Part A1 of the Act”.

33.—(1) Rule 5.9 (voting in a decision procedure) is amended as follows.

(2) In paragraph (2), before “an administration” insert “a decision procedure in respect of a moratorium under Part A1 of the Act or”.

34.—(1) Rule 5.11 (notice of decision procedures or of seeking deemed consent: when and to whom delivered) is amended as follows.

(2) In the table in paragraph (1), before the entry for “administration” insert—

“Moratorium under decision of pre- in the case of 5 days” Part A1 of the Act	moratorium creditors a decision under under section A11 and section A11 the pre- decisions of creditors moratorium creditors, required by virtue of or, where the decision an order under section is required by virtue of A44(3) an order under section A44(3), the creditors
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35.—(1) Rule 5.14 (notice to company officers in respect of meetings) is amended as follows.

(2) In paragraph (1), before “a proposal for a CVA” insert “a decision procedure in respect of a moratorium under Part A1 of the Act,”.

36.—(1) Rule 5.22 (adjournment by chair) is amended as follows.

(2) In paragraph (1), after “subject to” insert “rule 5.22A which applies for the purpose of a decision procedure in respect of a moratorium under Part A1 of the Act and”.

37. After rule 5.22 insert—

“Adjournment of meeting in, or for the purpose of, a moratorium under Part A1 of the Act

5.22A.—(1) This rule applies where a meeting is for the purpose of a decision procedure in respect of a moratorium under Part A1 of the Act.

(2) Where this rule applies the chair may, (and must if it is so resolved), adjourn a meeting.

(3) A meeting may be adjourned under this rule on more than one occasion.

(4) An adjournment under this rule—

(a) must not be:

(i) for a period which is more than 14 days;

(ii) to a day which is more than 14 days after the first day on which the meeting was held; and

(b) where a meeting is for the purpose of seeking a decision of creditors to a revised end date for a moratorium under section A11, must be to a day which is before the end of the moratorium⁽⁵⁾.

(5) Section A9 makes provisions specifying the time at which the moratorium comes to an end in cases where the moratorium has not previously been extended and section A11 makes provisions specifying the time at which the moratorium comes to an end in cases where the moratorium has previously been extended.

(5) This rule is subject to any direction of the court.”.

38.—(1) Rule 5.23 (adjournment in the absence of chair) is amended as follows.

(2) In paragraph (1), before “an administration” insert “a decision procedure in respect of a moratorium under Part A1 of the Act or”.

39.—(1) Rule 5.24 (statements of claim and documentary evidence of debt in adjournment) is amended as follows.

(2) Before “in an administration” insert “for the purpose of a decision procedure in respect of a moratorium under Part A1 of the Act or”.

40.—(1) Rule 5.26 (creditors’ voting rights) is amended as follows.

(2) Before paragraph (1) insert—

“(A1) In a decision procedure in respect of a moratorium under Part A1 of the Act a creditor is entitled to vote only if the requirements in paragraph (1)(a) to (c) are satisfied in relation to that decision procedure.”.

41.—(1) Rule 5.28 (calculation of voting rights) is amended as follows.

(2) Before paragraph (1)(a) insert—

“(za) in a decision procedure in respect of a moratorium under Part A1 of the Act, as at the decision date;”.

(3) In paragraph (1)(b)—

(a) for sub-paragraph (iii) substitute—

“(iii) where (i) and (ii) do not apply, at the decision date;”; and

(b) omit sub-paragraph (iv).

(4) In paragraph (3), before “a proposed CVA” insert “a decision procedure in respect of a moratorium under Part A1 of the Act, or”.

(5) For paragraph (6) substitute—

“(6) The value of the debt for voting purposes is its full value without deduction of the value of the security in the following cases—

(a) where, in respect of a moratorium under Part A1 of the Act, there is a decision of pre-moratorium creditors on whether to extend or further extend that moratorium under section A11; and

(b) where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 and the administrator has been requested to seek a decision under paragraph 52(2) of that Schedule.”.

42.—(1) Rule 5.29 (calculation of voting rights: hire purchase agreements) is amended as follows.

(2) Before paragraph (1) insert—

“(A1) In a decision procedure in respect of a moratorium under Part A1 of the Act, a creditor under a hire purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company at the decision date.

(B1) In calculating the amount of any debt for the purpose of paragraph (A1) no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of a moratorium for the company coming into force.”.

43.—(1) Rule 5.31 (requisite majorities) is amended as follows.

(2) Before paragraph (1) insert—

“(A1) Subject to paragraphs (B1) and (D1), a decision in respect of a moratorium under Part A1 of the Act is made when a majority (in value) of those voting have voted in favour of the proposed decision.

(B1) A decision is not made if, of the total number of those creditors voting in respect of the proposed decision who are, to the best of the convener’s belief, unconnected with the company, a majority vote against it.

(C1) For the purpose of paragraph (B1) a creditor is unconnected unless the convener decides that the creditor is connected.

(D1) In the case of a decision which is required by virtue of an order under section A44(3) paragraphs (A1) and (B1) have effect subject to such modifications as may be set out in the court’s order.”.

(3) For paragraph (3) substitute—

“(3) In the case of a proposed CVA a decision approving a proposal or a modification is made when 75% or more (in value) of those responding vote in favour of it.”.

44.—(1) Rule 5.32 (appeals against decisions under this Chapter) is amended as follows.

(2) At the beginning of paragraph (3)—

(a) omit “If the”; and

(b) insert “In respect of a decision, other than one which is taken, or required, under Part A1 of the Act (as to which see paragraphs (3A) and (3B)) if that”.

(3) After paragraph (3) insert—

“(3A) Subject to paragraph (3B), on an appeal against a decision taken, or required, under Part A1 of the Act a court may—

(a) reverse the decision;

(b) vary the decision;

(c) declare certain votes to be invalid; or

(d) make such order as it sees fit.

(3B) A court must not make an order of the kind referred to in paragraph (3A)(a) to (c) if—

(a) it is satisfied that the circumstances which led to the appeal did not give rise to unfair prejudice or material irregularity; or

(b) the decision was taken at a time when the moratorium was in force, and that moratorium has subsequently come to an end.”.